87-808 (1)

CASE NO.:_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

SANDRA SAPP FLETCHER, SYLVIA SAPP VANDERGRIFT AND JAMES WINSTON SAPP, JR.,

Petitioners,

vs.

ESTATE OF HELEN SAPP CHRIST,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

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QUESTIONS PRESENTED FOR REVIEW

I

Does Fourteenth Amendment due process prohibit a judgment upholding the will of an adjudicated incompetent where no competent evidence of Testatrix' knowledge of the extent of her bounty exists and the drafting attorney was attorney for the primary beneficiary when the will was drafted and executed?

II

Does Fourteenth Amendment due process prohibit a judgment upholding the will of an adjudicated incompetent entered in the face of presumptions of continued incompetency and undue influence, neither of which was overcome by competent evidence as a matter of law.

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The (R____) references are in conformity with the designations in the Florida Appellate Court except that petitions for rehearing and orders denying them are kept without such designations in the Appellate Court with the record on appeal returned to the trial court.

TABLE OF AUTHORITIES

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS

The judicial opinion and findings of fact of the trial court is part of the record on appeal in the District Court of Appeal of Florida, First District, docketed as case number BQ-385 and is set out in full in the Appellant's Appendix in that court. It is also in the trial court in the Circuit Court of the Second Judicial Circuit, in and for Gadsden County, Florida. In Re: Estate of Helen Sapp Christ, deceased, Case no.: 83-339-PR.

The order affirming the trial court's entry of judgment, Per Curiam, is reported as Fletcher v. Estate of Christ, 508 So2d 1239.

JURISDICTIONAL STATEMENT

The Judgment sought to be reviewed was dated and entered Per Curiam, Affirmed, without opinion, on June 1, 1987, (A 43) a Motion for Rehearing and Motion for Rehearing en banc was filed on the 16th of June, 1987.

A Per Curiam affirmance without opinion, as this Court recognized in Hobbie v. Unemployment Appeals Com'n of Florida, ____ US____, 107 S Ct 1046 (1987), had the effect of precluding Florida Supreme Court Review.

The jurisdiction of this Honorable Court is invoked pursuant to the specific provisions of 28 U.S.C. Section 1257 (3).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

Constitution of the United States

Article XIV, Section 1
(Fourteenth Amendment)

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the State wherein they reside. No State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

FLORIDA STATUTES

Section 732.501, Florida
Statutes, 1980

"who may make a will - Any person 18 or more years of age who is of sound mind may make a will."

Section 732.5165, Florida Statutes, 1980

"Effect of fraud, duress, mistake, and undue influence - A will is void if the execution is procured by fraud, duress, mistake, or undue influence. Any part of the will is void if so procured, but the remainder of the will not so procured shall be valid if it is not invalid for other reasons."

STATEMENT OF THE CASE

The decedent, HELEN SAPP CHRIST (Helen), had a brother, Dr. James Winston Sapp, Sr., now deceased, and a sister, Rosalie Morleland, (Rosalie) whose son, Hugh Moreland (Hugh) is the primary beneficiary of the will of Helen. Rosalie also has a daughter, Marjorie Morgan. (Contestants' Exhibit 2)

Dr. James Winston Sapp, Sr. left surviving him Sandra Sapp Fletcher, Dr. James Winston Sapp, Jr. and Sylvia Sapp Vandergrift. (Contestants' Exhibit 2) These surviving children were the Contestants below and Petitioners here.

Helen's husband, Harold, was deceased at the time the will

was executed. She had no children. (Contestants' Exhibit 2)

Helen had a long history of mental illness and shortly before and after Harold's death, she spent much of her time in nursing homes. (R 215-218; 159, 163)

While Helen was in a Georgia nursing home in the late 70's after Harold's death, she was visited by Attorney John Shaw Curry at the insistance of Hugh and Rosalie, both of whom accompanied Mr. Curry to the nursing home. (R 197-198; R 72)

The purpose of this visit was to convince Helen that a guardianship should be established for her. (R 197)

Mr. Curry recalled that she was all for it and as a result,

guardianship proceedings were begun and concluded on the 6th day of November, 1978, ending in Hugh being appointed as Guardian of Helen's property with Mr. Curry as his attorney. (Contestants' Exhibit 2)

Some weeks prior to the 22nd day of April, 1980, Rosalie, after Hugh talked to her about Helen needing a will and she having told Helen the law required it, (R 168) drove Helen to the office of Attorney Curry where a will drafting conference was held among Helen, Rosalie and Mr. Curry.

On the 22nd day of April, 1980, Helen executed the contested will in the presence of Dr. Reddick, Attorney Curry and Margaret Suber; Dr. Reddick and Margaret Suber being attesting

witnesses. The will bequeathed $500.00 each to the three Petitioners and to one other niece with the rest going to Hugh; over $100,000.00.

Just who else was there, from the testimony, is hopelessly conflicting; Margaret Suber thought Rosalie was there (R 153) and sitting to the right. (R 155) Dr. Reddick was not sure if Margaret Suber was there but thought Samuel Thompson was there. (Respondent's Exhibit 2, Page 17)

Helen died on the 14th day of September, 1983. (R 3)

On the 21st of October, 1983, after Helen's death, Hugh petitioned through his attorney, Mr. Curry, for letters of

administration and for his appointment as personal representative under the will. (R1)

On January 1st, 1984, the Petitioners' filed their petition for an order revoking probate and declaring the will invalid for lack of testamentary capacity and for the exercise of undue influence in procuring the will. (R 28)

A non-jury trial was held on the 9th of October, 1986 (R 133-249) before the Honorable Ben C. Willis, who entered a Final Judgment adverse to Contestants on the 13th day of November, 1986. (A1; R 119-129)

Notice of Appeal was timely filed on the 11th day of November, 1986, in the District Court of Appeal of Florida, First District. (R 132)

On June 1, 1987, that Court Per Curiam affirmed, without opinion, the trial court's judgment. (A43)

A Motion for Rehearing and for Rehearing En Banc was filed on the 16th of June, 1987, and was denied without opinion on the 6th of July, 1987. (A44)

The Constitutional issue under the Fourteenth Amendment was first raised in the Motion for Rehearing and for Rehearing En Banc in paragraphs 8, 11 and 12.

REASONS FOR GRANTING THE WRIT

This case is a chronical of a woman who became the victim of the very laws and procedures designed to protect her.

The actors have already been identified in the Statement of the Case, supra.

The Attorney, Mr. Curry, represented three people during the passage of events. He represented Hugh and Rosalie in convincing Helen to submit to the appointment of Hugh as her guardian, he represented Hugh as guardian of Helen's property, he represented Hugh as personal representative of Helen's deceased husband's estate and he represented Helen at the same time in drafting and procuring

the execution of Helen's will in which Hugh became the primary beneficiary.

The will contest proceeded upon an agency theory; that Hugh had two agents, his mother Rosalie and his attorney, Mr. Curry.

It was through this agency artifice that Hugh procured the execution of the contested will.

After Hugh became Helen's guardian he suggested to Rosalie that Helen should make a will. According to Rosalie, the reason given Helen that she should make a will was because it was the law that she have a will. (R 165)

John Shaw Curry was never asked if the law required one to

have a will but stated that had he been asked he would have advised "no". (R 212) The only reasonable inference from the evidence is that Hugh told Rosalie Helen should make a will because it was the law, to ensure that Helen make a will.

Following Hugh's suggestion, Rosalie took Helen to see Mr. Curry preparatory to preparing the will and told John Shaw what Helen wanted in the will. (R 162-164)

John Shaw Curry stated that he never told Hugh about Helen's will or its terms. (R 213) This is quite immaterial because at the times material his client was Hugh, the primary beneficiary. (A 18-23; Contestant's Exhibit 1, Petitions in the Estate of Harold

Christ and in the Guardianship of Helen Sapp Christ) Under such circumstances of dual representation, the law irrebuttably presumes the confidences between Helen and John Shaw Curry were passed to Hugh. Sears, Roebuck & Co. v. Stansbury, 374 So2d 1051 (Fla. 5th DCA 1979).

In addition to all this, Mr. Curry admitted he had prepared the Affidavit of Dr. Reddick swearing to the testamentary capacity of Helen before the signing of the will. (Emphasis supplied) (R 211)

This is only susceptible of the inference that Dr. Reddick had predetermined Helen's competency before the execution of the will.

The case of Haynes v. First National State Bank of N.J., 432 A 2d 890, is very similar. There the New Jersey Supreme Court was faced with an issue it described as:

"The major issue presented is whether the will is invalid on the grounds of 'undue influence' attributable to the fact that the attorney, who advised the testatrix and prepared the testamentary instruments, was also the attorney for the principal beneficiary, the testatrix's daughter, in whom the testatrix had reposed trust, confidence and dependency."

The trial court had held that the circumstances had created a presumption of undue influence but the presumption had been rebutted.

The New Jersey Supreme Court in reversing stated:

"[6] In imposing the higher burden of proof in this genre of cases, our courts have

continually emphasized the need for a lawyer of independence and undivided loyalty, owing professional allegiance to no one but the testator."

The Florida case of In Re: Estate of Carpenter, 253 So2d 697 (Fla. 1974) was cited as authority.

The Final Judgment, citing In Re: Estate of Carpenter, supra, set out the six criteria for determining undue influence in undue influence cases.

It will be shown that in all but one was accomplished through Hugh's agents:

Criteria (1): "Presence of beneficiary at the signing of the will." Hugh's agent and attorney, Mr. Curry was there.

Criteria (2): "Presence of beneficiary on those occasions when

testator expressed desire to make a will." Conceded that there is no evidence Helen voluntarily expressed any such desire.

Criteria (3): "Recommendation by beneficiary of an attorney to draw a will." Though ruling there was no undue influence, the final judgment concedes this criteria was met. (A 38)

Criteria (4): "Knowledge of contents of will by beneficiary prior to execution." As earlier pointed out this knowledge was irrefutably imputed to Hugh through his attorney.

Criteria (5): "Giving instructions by beneficiary on preparation of will." This <u>again</u> was done by Rosalie at the will drafting conference. (R 162-164)

Criteria (6): "Safekeeping of will by beneficiary subsequent to execution." Here again, the will was kept by Mr. Curry, Hugh's attorney.

All of the Criteria but Number (2) were met by the evidence in this case.

Undue influence need not be exercised by the claimant under a challenged will, but by another on his behalf as in the case of In Re: Reid's Estate, 138 So2d 342 where attorney/beneficiary had a second attorney procure and prepare the will and a third attorney to see to its execution. Their actions were imputed to the beneficiary and the will was denied probate because of the beneficiary's undue influence exercised by others.

Regarding the presumption of continuing incompetency, the Final Judgment noted that attesting witness Dr. Reddick stated that Helen had been lucid and competent many months before executing the will.

However, the conclusion of Dr. Reddick that Helen understood the nature of what she was doing is based upon Dr. Reddick's evaluation of her understanding that she had a prior will, a supposed fact created by Dr. Reddick's leading question to Helen when he asked her if she understood that this represented a departure from what her will had been previously. Clear proof of her failure to comprehend the nature of the proceeding since she had no prior will. (R 164)

Obviously, she could not have understood the provisions of an alleged prior will which did not exist no matter what she compliantly indicated to Dr. Reddick, Attorney Curry, Margaret Suber, and perhaps, Rosalie.

Significantly, there is no evidence that this misapprehension of Dr. Reddick was corrected by Rosalie or Attorney Curry at the time the will was executed leaving Helen under the impression she had a prior will.

Look at the real nature and extent of Helen's property:

Helen had around $100,000.00 in trust.

Helen had Real Estate consisting of a house and lot.

Helen had personalty other than cash, consisting of household goods.

The record is absolutely devoid of even an inference that Helen even knew she owned any real estate at the time of executing the will.

"Personal property" includes all property that is not real property.

The nature of this class of property can vary with physical descriptions, number of items and values.

The evidence is uncontroverted that Helen owned such property but, again, there is a complete dearth of evidence of Helen's knowledge of this class of property other than "money" at the

time of the execution of the will. There is evidence that much of Helen's personalty, such as the china and silverware in her home, were divided by Rosalie and Hugh BEFORE HELEN DIED. (R 234)

This is subject to the strong inference that the right to such items would reside in Hugh after Helen died, a knowledge irrebuttably imputed to Hugh through his attorney from his dual representations.

Therefore, except for that statement to Helen that she should understand that she had a "lot of money in the bank" there is absolutely no evidence that she knew the nature of her other property consisting of real estate and personal property.

Findings of fact of a judge in a case tried without a jury will not be disturbed except when such findings are contrary to the manifest weight of the evidence or contrary to the legal effect of the evidence. Obviously here the critical findings of the trial judge were erroneous for both reasons. DIXSON v. KATTAL, 311 So2d 827 (Fla. 3rd DCA 1975), GOLDSTEIN v. GOLDSTEIN, 310 So2d 361 (Fla. 3rd DCA 1975), NORTHWESTERN NAT. INS. CO. v. GENERAL ELEC., 362 So2d 120 (Fla. 3rd DCA 1978).

Hugh relies upon self-serving responses to overcome the presumptions against him as follows:

Q. Did you use any kind of persuasion, duress, force,

coercion, or artful or fraudulent contrivances to get her to make or sign a will?

A. No, sir. (R 172)

Q. What did you observe Helen's mental condition to be in 1980?

A. ...as far as her mental condition, I never knew her mental condition to be anything other than normal.

Q. Did you ever see her when you considered her not to be lucid or not understand what was going on around her?

A. No, sir, I don't believe I did. (R 175)

Q. Did you ever use any undue influence on Helen to get her to sign a will or to do anything for you?

A. Oh, no, sir. No, never.

Q. Did you try to use any kind of influence on Helen to make her do anything for you or to make a will.

A. No, sir. (R 175)

(Emphasis supplied)

Yet, Hugh joined in the petition to have Helen declared incompetent

and, as the trial judge correctly pointed out, instigated the trip to the Thomasville, Georgia nursing home to discuss the matter of a guardianship with Helen in company of his attorney, Mr. Curry. (R 197-198)

After that trip Mr. Curry then undertook to represent Rosalie Moreland and Hugh Moreland as Petitioners and Hugh as Guardian respectively, to have Helen declared incompetent for "mental incompetence". That petition reads:

"4. Your Petitioner variably believes that Helen Sapp Christ is mentally incompetent and because of her mental disability is incapable of caring for or managing her property and accordingly is likely to dissipate, lose or not make claim for property she presently owns or might be legally entitled to."

which Petition specifically was sworn to by Hugh and Rosalie.

So Hugh, though testifying under oath at trial that he had never seen Helen when she wasn't lucid and able to understand what was going on around her, swore under oath that Helen was mentally incompetent, incapable of managing her own affairs.

A rather drastic procedure when a power of attorney would have sufficed without the incompetency stigma. Or, perhaps, establishment of a voluntary guardianship.

The final judgment, the affirmance of which brings Petitioners to this Court, is devoid of any evidentiary foundation and therefore violate

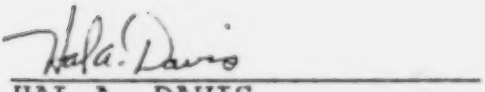
the due process clause of the Fourteenth Amendment. In addition, the conclusions of law and fact fly in the face of Sections 732.501 and 732.5165, Florida Statutes 1980, since upholding of the will is without support. Petitioners do not feel that it stretches the rationale of North Carolina v. Pearce, 395 US 711, to apply it to this type of civil proceeding. The appearance of unfairness to permit such a judgment to stand without any substantial proof and in the face of legal presumptions totally unmet, is obvious.

The treatment of the now deceased Helen cannot be salved but it can be remedied as to her heirs.

The Court of Appeal of Florida, First District, has

decided an important question of federal law, that has not been settled by this Court and has sanctioned such a departure from due process as call for a decision by this Honorable Court.

Respectfully Submitted,



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